IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

:: J U D G M E N T ::

D.B. CIVIL SPECIAL APPEAL No.2/97

Yogesh Chand Bhardwaj
Vs.
The Rajasthan State Road Transport Corporation & Ors.

Date of Judgment :::: 2.4.2007

P R E S E N T

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Shri Babu Lal Gupta) for appellant.
Shri Manish Bhandari)
Ms. Anisha Jain) for the respondents.

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BY THE COURT (PER HON'BLE THE CHIEF JUSTICE)(ORAL):-

This special appeal is directed against the order of the learned Single Judge dated 8.5.1996 in S.B. Civil Writ Petition no.3704/95 dismissing the writ petition of the appellant.

The appellant had filed the writ petition for quashing the order dated 30.9.1993 contained in Annexure-4 to the petition to the extent he was appointed afresh on probation rather than reinstated on the post in the scale of 950-1680. The appellant also sought consequential directions.

Brief facts of the case are that on 27.4.1987 the appellant was appointed on daily wages on the post of Conductor in the Rajasthan State Road Transport Corporation (in short, `the Corporation'). On 13.1.1988 he was appointed on probation on the post in the scale of 880-1680 and posted in Bharatpur depot of the Corporation. Soon after, on 25.5.1988 he was retrenched from employment. The appellant filed S.B. Civil Writ Petition No.2599/88 challenging the said order. By an interim order he was allowed to continue on the post. During pendency of the writ petition, on 15.4.1989 another order of retrenchment was passed, which the appellant challenged separately in S.B. Civil Writ Petition No.3453/89. The writ petitions were finally allowed by separate orders on 7.4.1993 and 8.4.1993. The impugned orders were quashed and the appellant was reinstated in service with consequential benefits except actual wages. As regards wages for the intervening period, the Court observed that the appellant would be free to avail of the remedy under Section 33C(2) of the Industrial Disputes Act. In the light of the said orders, the General Manager of the Corporation issued the impugned order on 30.9.1993. Instead of reinstating the appellant as directed by this Court, he was appointed on probation treating the appointment as a fresh appointment.

By reason of the orders of this Court dated 7.4.1993 and 8.4.1993 in the aforesaid writ petitions, the appellant was entitled to restoration of the status held on the date of termination i.e. 25.5.1988 and he was thus entitled to reinstatement rather than re-employment. The learned Single Judge however rejected the case of the appellant observing that in respect of his past service, he can raise dispute under the Industrial Disputes Act. The learned Single Judge further observed that "re-employment of a retrenched Conductor could only confer a right for him to be considered in accordance with the policy". We are afraid, the learned Single Judge completely missed the point.

Counsel for the Corporation tried to explain the circumstances in which impugned order dated 25.5.1988 came to be passed. However it is plain that the Corporation cannot be permitted to go behind the orders of this Court dated 7.4.1993 and 8.4.1993 which attained finality. In view of those orders, the Corporation had no option but to reinstate him in the post on the same terms and conditions, that is, restore the status held by him on the date of retrenchment viz. 25.5.1988. The retrenchment having been found to be illegal, the appellant was clearly entitled to reinstatement. If the Corporation so

wanted it could justify its action in the earlier writ petitions before this Court. The learned Single Judge, as seen above, did not pass any specific order for payment of wages for intervening period observing that the appellant may take recourse of the provisions of Section 33C(2) of the Industrial Disputes Act.

In the above premises, all that needs to be done is to modify the order of the General Manager of the respondent Corporation dated 30.9.93 to the extent that the appellant shall be treated to have been reinstated on the post of Conductor in the scale of Rs.950-1680, allowed continuity of service, notional fixation of his pay and other consequential benefits to him accordingly.

In the result, the order of the learned Single Judge is set aside and the appeal is allowed in the above terms.

(Mohammad Rafiq),J. **(S.N. Jha),C.J.**

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